Supreme Court, U. S.
FILED
FEB 26 1980
MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States.

OCTOBER TERM, 1979.

No. 79-1069.

RONCI MANUFACTURING CO., INC.,
PETITIONER,

v.

STATE OF RHODE ISLAND ET AL.,
RESPONDENTS.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of Rhode Island.

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Question Presented.

Rhode Island condemned for freeway purposes a portion of a single tract of petitioner's land, leaving petitioner with the portion containing a long-established water system consisting of two dams and related appurtenances. Petitioner's continued operation of the dams after the condemnation would cause substantial backflow of water over the condemned portion. With respect to the condemnation's effects on the water

system, Rhode Island's highest court held that no compensation should be paid. The court ruled that under Rhode Island's Mill Dam Act petitioner had a legal right to continue to operate the dams, and accordingly petitioner's rights in the water system were not "taken." "Ronci's right to operate the Ashton dams was unaffected by the taking in this case and, therefore, the State did not interfere with its integrated water system." The question presented is:

Whether, in this case involving a partial taking, constitutional just compensation is owing, by way of severance damages or otherwise, where the Rhode Island Supreme Court considered the claim of a possible statutory action for damages and rejected it, in effect saying that there was no proof before it of any such liability, for the State took what petitioner Ronci had which included no claim for damages.

Statement of the Case.

The material presented in the petitioner's brief is accepted by respondent, with the exception of the petitioner's interpretation of the language of the Rhode Island Supreme Court. The court did not say that the 1970 State "Declaration of Clarification re Intention of Taking" contained a contrary indication and was, therefore, inadmissible. The Declaration merely placed on the town record what the court concluded, to wit, that the taking was subject to the Mill Dam Act, and that the petitioner was not subject to damages. The court, after consideration of all questions involved, declared that petitioner's right to operate the Ashton dams was "unaffected by the taking in this case" (Petition, p. A8).

Reasons for Denying the Writ.

The Supreme Court of Rhode Island has followed and applied the rules of constitutional just compensation. The Rhode Island court is well aware of the right of a condemnee to severance damages, as is indicated in the Rhode Island cases cited by petitioner in its petition (pp. 7, 8).

There was no showing by the petitioner of the existence of tort liability of the petitioner to the State in the present case. The theory of the petitioner's case was that, because of the condemnation, petitioner was forced to remove its Ashton dams because it could not backflow water onto the land condemned. The court denied this claim, saying that the petitioner had the right to continue to operate the Ashton dams under the Mill Dam Act of the State of Rhode Island, §§ 46-18-1 et seq., R.I. G.L. 1956 (as amended) (Petition, pp. A57, A58).

There was no evidence presented to show that tort liability damages existed. There was, therefore, no proof of any severance damage. The Ashton dams were not established by the petitioner; they were in existence for many years before the petitioner purchased them. There was no evidence presented showing that damages for flooding the area of the condemned property had not previously been paid. There was no showing that they ever existed. There was no evidence presented to show what the damages would be if the petitioner was subject to a tort claim. The only evidence of damages presented was predicated upon petitioner being prevented from continuing to operate the Ashton dams, and the court said petitioner was not prevented from continuing to operate the dams.

The cases cited by the petitioner concerning the violation of zoning ordinances created by condemnation and the liability of the State concerning a well-capping law do not apply to this case (Petition, p. 10). In those cases, it was shown that the or-

dinance or law was actually effective against the condemnee's property. There was no showing in the present case that the State had or had attempted to make a claim in tort against the petitioner for damages.

Actually, under the law of the State of Rhode Island, there must first be a trial to establish the question of liability under the Mill Dam Act. Then the petitioner may bring an action for damages to determine what they might be. *White* v. *Woonasquatucket Reservoir Co.*, 41 R.I. 270, 274, 103 Atl. 795, 796 (1918).

The State in its condemnation took from the petitioner what it had. The petitioner, at the time of condemnation, had no claim for damages against the operator of the Ashton dams. The State has no claim for damages against the petitioner. The Rhode Island Supreme Court recognized this and, therefore, allowed no severance damages.

The petitioner is not entitled to certiorari as a matter of right. *Fay* v. *Noia*, 372 U.S. 391, 436 (1963). *Williams* v. *Georgia*, 349 U.S. 375, 389 (1955).

The petitioner has not presented a case showing a conflict in decisions in the courts, or a case of sufficient importance to be considered. *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 73-75 (1955). This case will not affect cases other than the particular one in question. *Rice, supra*, at 79 n.1. *District of Columbia* v. *Sweeney*, 310 U.S. 631 (1940). The decision of the Rhode Island Supreme Court is correct in every instance and is bolstered by the further finding of the lower court. The lower court found that the severance damages to the remaining property claimed by the petitioner were not justified even if its theory of the destruction of its right to continue the operation of the dams was acceptable.

The decision of the Rhode Island Supreme Court was essentially a factual determination that the operation of the Ashton dams was unaffected by the taking in this case, and, therefore,

the State did not interfere with petitioner's integrated water system. The court was aware of the petitioner's claim for damages to the State and rejected it. This construction of the Rhode Island Mill Dam Act by the Rhode Island Supreme Court as it applied to the existing situation should be accepted. *Bob-Lo Excursion Co.* v. *Michigan*, 333 U.S. 28, 33 (1948). *Georgia Railway & Electric Co.* v. *Decatur*, 295 U.S. 165, 170 (1935). *Standard Oil Co.* v. *New Jersey*, 341 U.S. 428, 433 (1951).

Conclusion.

No injustice is worked on petitioner. Petitioner still has its right to operate the Ashton dams unaffected by the taking, and the state did not interfere with petitioner's integrated water system. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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